

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jun 24, 2020**

SEAN F. McAVOY, CLERK

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF WASHINGTON**

CAROLYN S.,<sup>1</sup>

Plaintiff,

vs.

ANDREW M. SAUL,  
COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

No. 1:20-cv-03010-MKD

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND DENYING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

ECF Nos. 14, 17

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 14, 17. The parties consented to proceed before a magistrate judge. ECF No. 6. The Court, having reviewed the administrative record and the parties' briefing,

---

<sup>1</sup> To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. *See* LCivR 5.2(c).

1 is fully informed. For the reasons discussed below, the Court grants Plaintiff's  
2 motion, ECF No. 14, and denies Defendant's motion, ECF No. 17.

### 3 JURISDICTION

4 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g);  
5 1383(c)(3).

### 6 STANDARD OF REVIEW

7 A district court's review of a final decision of the Commissioner of Social  
8 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is  
9 limited; the Commissioner's decision will be disturbed "only if it is not supported  
10 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,  
11 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a  
12 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159  
13 (quotation and citation omitted). Stated differently, substantial evidence equates to  
14 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and  
15 citation omitted). In determining whether the standard has been satisfied, a  
16 reviewing court must consider the entire record as a whole rather than searching  
17 for supporting evidence in isolation. *Id.*

18 In reviewing a denial of benefits, a district court may not substitute its  
19 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,  
20 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one

1 rational interpretation, [the court] must uphold the ALJ's findings if they are  
2 supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674  
3 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an  
4 ALJ's decision on account of an error that is harmless." *Id.* An error is harmless  
5 "where it is inconsequential to the [ALJ's] ultimate nondisability determination."  
6 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ's  
7 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*  
8 *Sanders*, 556 U.S. 396, 409-10 (2009).

#### 9 **FIVE-STEP EVALUATION PROCESS**

10 A claimant must satisfy two conditions to be considered "disabled" within  
11 the meaning of the Social Security Act. First, the claimant must be "unable to  
12 engage in any substantial gainful activity by reason of any medically determinable  
13 physical or mental impairment which can be expected to result in death or which  
14 has lasted or can be expected to last for a continuous period of not less than twelve  
15 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant's  
16 impairment must be "of such severity that he is not only unable to do his previous  
17 work[,] but cannot, considering his age, education, and work experience, engage in  
18 any other kind of substantial gainful work which exists in the national economy."  
19 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

1 The Commissioner has established a five-step sequential analysis to  
2 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§  
3 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner  
4 considers the claimant's work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),  
5 416.920(a)(4)(i). If the claimant is engaged in "substantial gainful activity," the  
6 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
7 404.1520(b), 416.920(b).

8 If the claimant is not engaged in substantial gainful activity, the analysis  
9 proceeds to step two. At this step, the Commissioner considers the severity of the  
10 claimant's impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the  
11 claimant suffers from "any impairment or combination of impairments which  
12 significantly limits [his or her] physical or mental ability to do basic work  
13 activities," the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),  
14 416.920(c). If the claimant's impairment does not satisfy this severity threshold,  
15 however, the Commissioner must find that the claimant is not disabled. *Id.*

16 At step three, the Commissioner compares the claimant's impairment to  
17 severe impairments recognized by the Commissioner to be so severe as to preclude  
18 a person from engaging in substantial gainful activity. 20 C.F.R. §§  
19 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more  
20

1 severe than one of the enumerated impairments, the Commissioner must find the  
2 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

3 If the severity of the claimant's impairment does not meet or exceed the  
4 severity of the enumerated impairments, the Commissioner must pause to assess  
5 the claimant's "residual functional capacity." Residual functional capacity (RFC),  
6 defined generally as the claimant's ability to perform physical and mental work  
7 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§  
8 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the  
9 analysis.

10 At step four, the Commissioner considers whether, in view of the claimant's  
11 RFC, the claimant is capable of performing work that he or she has performed in  
12 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).  
13 If the claimant is capable of performing past relevant work, the Commissioner  
14 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f).  
15 If the claimant is incapable of performing such work, the analysis proceeds to step  
16 five.

17 At step five, the Commissioner considers whether, in view of the claimant's  
18 RFC, the claimant is capable of performing other work in the national economy.  
19 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,  
20 the Commissioner must also consider vocational factors such as the claimant's age,

1 education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),  
2 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the  
3 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
4 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other  
5 work, analysis concludes with a finding that the claimant is disabled and is  
6 therefore entitled to benefits. *Id.*

7 The claimant bears the burden of proof at steps one through four above.  
8 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to  
9 step five, the burden shifts to the Commissioner to establish that 1) the claimant is  
10 capable of performing other work; and 2) such work “exists in significant numbers  
11 in the national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v.*  
12 *Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

### 13 ALJ’S FINDINGS

14 On March 7, 2017, Plaintiff applied both for Title II disability insurance  
15 benefits and Title XVI supplemental security income benefits alleging an amended  
16 disability onset date of February 10, 2016.<sup>2</sup> Tr. 94, 255-68. The applications were  
17 denied initially and on reconsideration. Tr. 176-84; Tr. 186-99. Plaintiff appeared

---

18  
19 <sup>2</sup> Plaintiff previously applied for Title II benefits, which was denied on September  
20 29, 2014; Plaintiff did not appeal the denial. Tr. 86-93.

1 before an administrative law judge (ALJ) on October 23, 2018. Tr. 35-85. On  
2 January 24, 2019, the ALJ denied Plaintiff's claim. Tr. 12-34.

3 At step one of the sequential evaluation process, the ALJ found Plaintiff,  
4 who met the insured status requirements through December 31, 2017, has not  
5 engaged in substantial gainful activity since February 10, 2016. Tr. 17. At step  
6 two, the ALJ found that Plaintiff has the following severe impairments: cervical  
7 spine impairment, carpal tunnel syndrome, bilateral knee impairment, degenerative  
8 joint disease of the hip, right ankle impairment, and obesity. Tr. 18.

9 At step three, the ALJ found Plaintiff does not have an impairment or  
10 combination of impairments that meets or medically equals the severity of a listed  
11 impairment. Tr. 22. The ALJ then concluded that Plaintiff has the RFC to perform  
12 light work with the following limitations:

13 [Plaintiff] can occasionally balance, stoop, kneel, and crouch.  
14 [Plaintiff] cannot climb or crawl. In the upper extremities, [Plaintiff]  
15 can frequently reach, handle, and finger. With the lower extremities,  
16 [Plaintiff] cannot use foot controls. [Plaintiff] would need to avoid  
17 concentrated exposure to vibration, pulmonary irritants, and hazards.

18 Tr. 23.

19 At step four, the ALJ found Plaintiff is capable of performing her past  
20 relevant work as a clerk, records technician, receptionist, childcare provider, and  
21 appointment clerk. Tr. 28. Therefore, the ALJ concluded Plaintiff was not under a

1 disability, as defined in the Social Security Act, from the amended alleged onset  
2 date of February 10, 2016, through the date of the decision. Tr. 29.

3 On November 13, 2019, the Appeals Council denied review of the ALJ's  
4 decision, Tr. 1-6, making the ALJ's decision the Commissioner's final decision for  
5 purposes of judicial review. *See* 42 U.S.C. § 1383(c)(3).

## 6 ISSUES

7 Plaintiff seeks judicial review of the Commissioner's final decision denying  
8 her disability insurance benefits under Title II and supplemental security income  
9 benefits under Title XVI of the Social Security Act. Plaintiff raises the following  
10 issues for review:

- 11 1. Whether the ALJ properly evaluated Plaintiff's symptom claims;
- 12 2. Whether the ALJ properly evaluated the medical opinion evidence; and
- 13 3. Whether the ALJ conducted a proper step-two analysis.

14 ECF No. 14 at 3-21.

## 15 DISCUSSION

### 16 A. Plaintiff's Symptom Claims

17 Plaintiff faults the ALJ for failing to rely on reasons that were clear and  
18 convincing in discrediting her symptom claims. ECF No. 14 at 17-20. An ALJ  
19 engages in a two-step analysis to determine whether to discount a claimant's  
20 testimony regarding subjective symptoms. SSR 16-3p, 2016 WL 1119029, at \*2.



1 “First, the ALJ must determine whether there is objective medical evidence of an  
2 underlying impairment which could reasonably be expected to produce the pain or  
3 other symptoms alleged.” *Molina*, 674 F.3d at 1112 (quotation marks omitted).

4 “The claimant is not required to show that [the claimant’s] impairment could  
5 reasonably be expected to cause the severity of the symptom [the claimant] has  
6 alleged; [the claimant] need only show that it could reasonably have caused some  
7 degree of the symptom.” *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

8       Second, “[i]f the claimant meets the first test and there is no evidence of  
9 malingering, the ALJ can only reject the claimant’s testimony about the severity of  
10 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the  
11 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations  
12 omitted). General findings are insufficient; rather, the ALJ must identify what  
13 symptom claims are being discounted and what evidence undermines these claims.  
14 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v.*  
15 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently  
16 explain why it discounted claimant’s symptom claims)). “The clear and  
17 convincing [evidence] standard is the most demanding required in Social Security  
18 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*  
19 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

1 Factors to be considered in evaluating the intensity, persistence, and limiting  
2 effects of a claimant's symptoms include: 1) daily activities; 2) the location,  
3 duration, frequency, and intensity of pain or other symptoms; 3) factors that  
4 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and  
5 side effects of any medication an individual takes or has taken to alleviate pain or  
6 other symptoms; 5) treatment, other than medication, an individual receives or has  
7 received for relief of pain or other symptoms; 6) any measures other than treatment  
8 an individual uses or has used to relieve pain or other symptoms; and 7) any other  
9 factors concerning an individual's functional limitations and restrictions due to  
10 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at \*7; 20 C.F.R. §§  
11 404.1529(c), 416.929(c). The ALJ is instructed to "consider all of the evidence in  
12 an individual's record," to "determine how symptoms limit ability to perform  
13 work-related activities." SSR 16-3p, 2016 WL 1119029, at \*2.

14 The ALJ found that Plaintiff's medically determinable impairments could  
15 reasonably be expected to cause some of the alleged symptoms, but that Plaintiff's  
16 statements concerning the intensity, persistence, and limiting effects of her  
17 symptoms were not entirely consistent with the evidence. Tr. 24.

18 *1. Gaps in Treatment*

19 The ALJ found Plaintiff's symptom complaints inconsistent with gaps in  
20 treatment for her left knee impairment. Tr. 25. An unexplained, or inadequately

1 explained, failure to seek treatment or follow a prescribed course of treatment may  
2 be considered when evaluating the claimant's subjective symptoms. *Orn v. Astrue*,  
3 495 F.3d 625, 638 (9th Cir. 2007). And evidence of a claimant's self-limitation  
4 and lack of motivation to seek treatment are appropriate considerations in  
5 determining the credibility of a claimant's subjective symptom reports. *Osenbrock*  
6 *v. Apfel*, 240 F.3d 1157, 1165-66 (9th Cir. 2001); *Bell-Shier v. Astrue*, 312 F.  
7 App'x 45, \*3 (9th Cir. 2009) (unpublished opinion) (considering why plaintiff was  
8 not seeking treatment). When there is no evidence suggesting that the failure to  
9 seek or participate in treatment is attributable to a mental impairment rather than a  
10 personal preference, it is reasonable for the ALJ to conclude that the level or  
11 frequency of treatment is inconsistent with the alleged severity of complaints.  
12 *Molina*, 674 F.3d at 1113-14.

13 The ALJ noted Plaintiff did not seek orthopedic care for her left knee  
14 impairment between 2014 and April 2016. Tr. 25. However, Plaintiff's amended  
15 alleged onset date is February 10, 2016. Tr. 15. As such, the ALJ's analysis  
16 primarily considered Plaintiff's lack of treatment in the two years prior to the  
17 alleged onset date. The ALJ also considered Plaintiff's lack of orthopedic  
18 treatment between May 2016 and May 2017. Tr. 25. Plaintiff was seen for care  
19 for her knee, though not by an orthopedist, after falling on her knee in January  
20 2017, Tr. 564, during which she was referred again to an orthopedist, Tr. 569.

1 Plaintiff then was seen for orthopedic care for her knee in March 2017, during  
2 which the provider noted Plaintiff had not received symptom relief from a brace,  
3 injections, or medication, and surgery was recommended as Plaintiff was unable to  
4 stand, walk, or drive her car for any length of time due to her left knee pain. Tr.  
5 406-07. Plaintiff's lack of treatment for her knee for less than eight months during  
6 the relevant adjudicative period is not a clear and convincing reason to reject  
7 Plaintiff's symptom claims, particularly when Plaintiff required a total knee  
8 arthroplasty when she returned to orthopedic care. The ALJ also does not point to  
9 any other gaps in treatment for any of Plaintiff's other impairments. The ALJ's  
10 finding is not supported by substantial evidence in the record; thus it was not a  
11 clear and convincing reasons to reject Plaintiff's symptom complaints.

## 12 *2. Improvement with Treatment*

13 The ALJ found Plaintiff's symptom claims were inconsistent with her  
14 improvement after surgery for her left knee impairment. Tr. 25. The effectiveness  
15 of treatment is a relevant factor in determining the severity of a claimant's  
16 symptoms. 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3) (2011); *Warre v. Comm'r*  
17 *of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) (determining that  
18 conditions effectively controlled with medication are not disabling for purposes of  
19 determining eligibility for benefits); *Tommasetti v. Astrue*, 533 F.3d 1035, 1040  
20

1 (9th Cir. 2008) (recognizing that a favorable response to treatment can undermine a  
2 claimant's complaints of debilitating pain or other severe limitations).

3 The ALJ noted the medical records did not demonstrate ongoing knee pain  
4 or significant functional limitations due to Plaintiff's knee impairment after  
5 Plaintiff's surgery. Tr. 25. As argued by Plaintiff, the cited records are for  
6 appointments when Plaintiff sought treatment for other impairments including her  
7 carpal tunnel syndrome and spine impairment. ECF No. 19 at 18 (citing Tr. 600,  
8 611, 616). Plaintiff continued having stiffness in her knee six months after  
9 surgery, Tr. 623, and required pain medications for treatment for her knee  
10 impairment almost one year after the operation, Tr. 605-08. Further, the ALJ does  
11 not argue that Plaintiff had improvement in her symptoms after her cervical spine  
12 surgery, and acknowledged Plaintiff had continued moderate degenerative disc  
13 disease even after her cervical fusion. Tr. 26 (Tr. 664). Similarly, the ALJ noted  
14 Plaintiff had continued symptoms after her remote ankle surgery, Tr. 25-26 (citing  
15 Tr. 513), and Plaintiff received only "some" relief to her carpal tunnel symptoms  
16 with treatment, Tr. 26 (Tr. 611). The ALJ's finding is not supported by substantial  
17 evidence in the record; thus, it was not a clear and convincing reasons to reject  
18 Plaintiff's symptom complaints

1           3. *Inconsistent Objective Medical Evidence*

2           The ALJ found Plaintiff's symptom claims were inconsistent with the  
3 objective medical evidence. Tr. 24-26. An ALJ may not discredit a claimant's  
4 symptom testimony and deny benefits solely because the degree of the symptoms  
5 alleged is not supported by objective medical evidence. *Rollins v. Massanari*, 261  
6 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir.  
7 1991); *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989); *Burch v. Barnhart*, 400  
8 F.3d 676, 680 (9th Cir. 2005). However, the objective medical evidence is a  
9 relevant factor, along with the medical source's information about the claimant's  
10 pain or other symptoms, in determining the severity of a claimant's symptoms and  
11 their disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. §§ 404.1529(c)(2),  
12 416.929(c)(2).

13           As the Court finds the only other reasons given by the ALJ to reject  
14 Plaintiff's statement were not supported, the ALJ's sole remaining reason of  
15 Plaintiff's statements being inconsistent with the objective medical evidence  
16 cannot be upheld. *See Burch*, 400 F.3d at 680-81. As such, the ALJ erred in his  
17 consideration of Plaintiff's symptom claims. On remand, the ALJ is instructed to  
18 reconsider Plaintiff's symptom complaints and incorporate the reported limitations  
19 into the RFC or give clear and convincing reasons, supported by substantial  
20 evidence, to reject Plaintiff's claims.

**B. Medical Opinion Evidence**

Plaintiff contends the ALJ erred in his consideration of the medical opinions of William Drenguis, M.D., Howard Platter, M.D., Norman Staley, M.D., Patrick Metoyer, Ph.D., and John Anderson, Ph.D. ECF No. 14 at 5-17.

There are three types of physicians: “(1) those who treat the claimant (treating physicians); (2) those who examine but do not treat the claimant (examining physicians); and (3) those who neither examine nor treat the claimant [but who review the claimant’s file] (nonexamining [or reviewing] physicians).” *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted). Generally, a treating physician’s opinion carries more weight than an examining physician’s, and an examining physician’s opinion carries more weight than a reviewing physician’s. *Id.* at 1202. “In addition, the regulations give more weight to opinions that are explained than to those that are not, and to the opinions of specialists concerning matters relating to their specialty over that of nonspecialists.” *Id.* (citations omitted).

If a treating or examining physician’s opinion is uncontradicted, the ALJ may reject it only by offering “clear and convincing reasons that are supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). “However, the ALJ need not accept the opinion of any physician, including a treating physician, if that opinion is brief, conclusory and inadequately supported

1 by clinical findings.” *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228  
2 (9th Cir. 2009) (internal quotation marks and brackets omitted). “If a treating or  
3 examining doctor’s opinion is contradicted by another doctor’s opinion, an ALJ  
4 may only reject it by providing specific and legitimate reasons that are supported  
5 by substantial evidence.” *Bayliss*, 427 F.3d at 1216 (citing *Lester*, 81 F.3d at 830-  
6 31). The opinion of a nonexamining physician may serve as substantial evidence if  
7 it is supported by other independent evidence in the record. *Andrews v. Shalala*,  
8 53 F.3d 1035, 1041 (9th Cir. 1995).

9 *1. Dr. Metoyer*

10 Dr. Metoyer performed a psychological consultative examination on July 16,  
11 2017, and rendered an opinion on Plaintiff’s functioning. Tr. 530-34. Dr. Metoyer  
12 diagnosed Plaintiff with unspecified anxiety disorder. Tr. 533. Dr. Metoyer  
13 opined Plaintiff’s remote memory and ability to interact with coworkers and the  
14 public are mildly impaired; her ability to complete a normal workday/workweek is  
15 moderately impaired; and her ability to handle the usual stress encountered in the  
16 workplace is markedly impaired if it requires persistence with tasks or interactions  
17 with others. Tr. 533. He further opined Plaintiff is able to reason, understand, and  
18 adapt, her recent and immediate memory is intact, concentration/persistence are  
19 adequate, and stated Plaintiff reported difficulties completing some tasks and  
20 engaging interpersonally. *Id.* The ALJ gave Dr. Metoyer’s opinion partial weight.



Tr. 21. As Dr. Metoyer's opinion is contradicted by the opinion of Dr. Gilbert, Tr. 106, the ALJ was required to give specific and legitimate reasons, supported by substantial evidence, to reject Dr. Metoyer's opinion. *See Bayliss*, 427 F.3d at 1216.

The ALJ found Dr. Metoyer's opinion that Plaintiff has marked limitations in adapting to stress was based on Plaintiff's subjective statements. Tr. 21. A physician's opinion may also be rejected if it is too heavily based on a claimant's properly discounted complaints. *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001). As the ALJ erred in his consideration of Plaintiff's symptom complaints, this was not a specific and legitimate reason to reject Dr. Metoyer's opinion. While the ALJ offered an additional reason to reject Dr. Metoyer's opinion, the Court finds the ALJ's error in the analysis of Dr. Metoyer's opinion is not harmless. As the case is being remanded to reconsider Plaintiff's symptom complaints, on remand, the ALJ is also instructed to reconsider Dr. Metoyer's opinion and incorporate the limitations into the RFC or give specific and legitimate reasons, supported by substantial evidence, to reject the opinion.

## 2. Dr. Drenguis

On June 22, 2017, Dr. Drenguis performed a physical consultative examination and rendered an opinion on Plaintiff's functioning. Tr. 513-18. Dr. Drenguis diagnosed Plaintiff with left knee pain with left total knee arthroplasty,

1 right knee degenerative joint disease, right ankle posttraumatic degenerative joint  
2 disease, left hip internal derangement, mid-back pain, and asthma. Tr. 517-18. Dr.  
3 Drenguis noted Plaintiff was using a walker at the time of the examination, and the  
4 opinion “is based on how she appears on today’s examination,” but Plaintiff was  
5 expected to show improvement in her left knee function with time. Tr. 518. Dr.  
6 Drenguis opined Plaintiff could stand and walk at least two hours and sit at least  
7 six hours; she needs a walker for postoperative analgesia; she can lift/carry 20  
8 pounds occasionally and 10 pounds frequently; she can occasionally climb,  
9 balance, stoop, and crouch, and cannot kneel or crawl; she can frequently reach  
10 with no limits on handling, fingering, or feeling; and she is limited in working  
11 around dust, fumes, and gases. *Id.* The ALJ gave Dr. Drenguis’ opinion partial  
12 weight. Tr. 27. As Dr. Drenguis’ opinion is contradicted by the opinions of Dr.  
13 Platter, Tr. 107-09, and Dr. Staley, Tr. 146-48, the ALJ was required to give  
14 specific and legitimate reasons, supported by substantial evidence, to reject Dr.  
15 Drenguis’ opinion. *See Bayliss*, 427 F.3d at 1216.

16 The ALJ found Dr. Drenguis’ opinion overall was consistent with the  
17 evidence but found the opinion that Plaintiff cannot kneel was based on his  
18 observations only one month after Plaintiff’s knee replacement. Tr. 27. An ALJ  
19 may discredit physicians’ opinions that are unsupported by the record as a whole.  
20 *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190 1195 (9th Cir. 2004).

1 Earlier in the decision, the ALJ noted Plaintiff's medical records demonstrated that  
2 after her surgery, she had little to no ongoing knee pain or significant functional  
3 limitations, she was doing fairly well with adequately controlled pain, and an MRI  
4 of the left knee was largely unremarkable. Tr. 25 (citing Tr. 492, 526, 545, 589-  
5 90, 600, 605, 611, 616, 623, 646, 668-69). Plaintiff argues she had continued knee  
6 pain and limitations due to her knee impairment. ECF No. 14 at 7-8. However, as  
7 the ALJ noted, any error in rejecting Dr. Drenguis' opinion regarding kneeling  
8 would be harmless as Plaintiff's prior work did not require kneeling. Tr. 27; *see*  
9 *Molina*, 674 F.3d at 1115.

10 Plaintiff argues the ALJ erred in rejecting Dr. Drenguis' opinion as Dr.  
11 Drenguis opined Plaintiff is capable of performing sedentary work and the ALJ  
12 found Plaintiff is capable of light work. ECF No. 14 at 6-7. Dr. Drenguis opined  
13 Plaintiff is capable of lifting/carrying 20 pounds occasionally and 10 pounds  
14 frequently and standing/walking "at least" two hours, and did not give any further  
15 opinion on her ability to stand and walk. Tr. 518. The ALJ found Dr. Drenguis'  
16 opinion consistent with light work, interpreting the opinion to mean Plaintiff could  
17 stand/walk at least six hours in the day, although it is unclear if that was Dr.  
18 Drenguis' intention. As the case is being remanded for the reasons discussed  
19 *supra*, the ALJ is instructed to also reconsider Dr. Drenguis' opinion. The ALJ is  
20 further instructed obtain a physical consultative examination prior to the remand

1 hearing to help determine Plaintiff's limitations after she recovered from her  
2 surgeries, and to call a medical expert to assist with determining Plaintiff's severe  
3 impairments and what limitations are caused by Plaintiff's severe impairments.

4 *3. State agency consultants*

5 On July 27, 2017, Dr. Platter, a State agency medical consultant, rendered  
6 two opinions on Plaintiff's functioning. Tr. 105-11. Dr. Platter opined that prior  
7 to February 10, 2016, Plaintiff was capable of lifting 20 pounds occasionally and  
8 10 pounds frequently; standing/walking six hours in a day and sitting six hours in a  
9 day; frequently stooping; occasionally climbing ramps/stairs, balancing, kneeling,  
10 crouching, and crawling; never climbing ladders/ropes/scaffolds; and she should  
11 avoid concentrated exposure to fumes, odors, dusts, gases, poor ventilation, and  
12 hazards. Tr. 111. Dr. Platter opined that from February 20, 2016 onward, Plaintiff  
13 is capable of lifting/carrying less than 10 pounds frequently and 10 pounds  
14 occasionally; standing/walking for two hours and sitting for six hours; frequently  
15 stooping; occasionally climbing ramps/stairs, balancing, crouching, and crawling;  
16 never climbing ladders/ropes/scaffolds; and she should avoid concentrated  
17 exposure to extreme cold, heat, wetness, fumes, odors, dusts, gases, poor  
18 ventilation, and hazards. Tr. 108-09. Dr. Staley, another State agency consultant,  
19 reviewed the evidence at the reconsideration level and gave the same opinion on  
20

1 Plaintiff's functioning. Tr. 146-50. The ALJ gave Dr. Platter and Dr. Staley's  
2 opinions limited weight. Tr. 28.

3 On October 13, 2017, Dr. Anderson, a State agency psychological  
4 consultant, reviewed Plaintiff's records and rendered an opinion on her  
5 functioning. Tr. 143-44, 150-51. Dr. Anderson found Plaintiff's anxiety disorder  
6 is severe as it causes mild limitations in her ability to understand, remember, or  
7 apply information and interact with others, but moderate limitations in  
8 concentration, persistence, or maintaining pace and adapting or managing oneself.  
9 Tr. 143-44. He further opined Plaintiff has moderate limitations in her ability to  
10 maintain attention/concentration for extended periods, respond appropriately to  
11 changes in the work setting, and set realistic goals or make plans independently of  
12 others. Tr. 150-51. The ALJ gave Dr. Anderson's opinion limited weight. Tr. 21.  
13 As the State agency consultants are nonexamining sources, the ALJ must consider  
14 the opinions and whether they are consistent with other independent evidence in  
15 the record. *See* 20 C.F.R. §§ 404.1527(b),(c)(1), 416.927(b),(c)(1); *Tonapetyan*,  
16 242 F.3d at 1149; *Lester*, 81 F.3d at 830-31.

17 As the case is being remanded to reconsider Plaintiff's symptom complaints  
18 and other medical opinions, the ALJ is instructed to reconsider the medical opinion  
19 evidence in its entirety, including the State agency opinions.  
20

### C. Step-Two Analysis

Plaintiff contends the ALJ erred in finding Plaintiff's anxiety is non-severe. ECF No. 14 at 20-21. At step two of the sequential process, the ALJ must determine whether the claimant suffers from a "severe" impairment, i.e., one that significantly limits her physical or mental ability to do basic work activities. 20 C.F.R. §§ 404.1520(c), 416.920(c). To establish a severe impairment, the claimant must first demonstrate the existence of a physical or mental impairment by providing medical evidence consisting of signs, symptoms, and laboratory findings; the claimant's own statement of symptoms alone will not suffice. 20 C.F.R. §§ 404.1521, 416.921.

An impairment may be found to be not severe when "medical evidence establishes only a slight abnormality or a combination of slight abnormalities which would have no more than a minimal effect on an individual's ability to work...." SSR 85-28 at \*3. Similarly, an impairment is not severe if it does not significantly limit a claimant's physical or mental ability to do basic work activities; which include walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; seeing, hearing, and speaking; understanding, carrying out and remembering simple instructions; responding appropriately to supervision, coworkers and usual work situations; and dealing with changes in a

1 routine work setting. 20 C.F.R. § 404.1522(a); SSR 85-28.<sup>3</sup>

2 Step two is “a de minimus screening device [used] to dispose of groundless  
3 claims.” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996). “Thus, applying  
4 our normal standard of review to the requirements of step two, [the Court] must  
5 determine whether the ALJ had substantial evidence to find that the medical  
6 evidence clearly established that [Plaintiff] did not have a medically severe  
7 impairment or combination of impairments.” *Webb v. Barnhart*, 433 F.3d 683, 687  
8 (9th Cir. 2005).

9 The ALJ found several of Plaintiff’s impairments non-severe, including her  
10 anxiety disorder. Tr. 18-20. Plaintiff contends the ALJ erred in finding her  
11 anxiety disorder non-severe. ECF No. 14 at 20-21. As the case is being remanded  
12 to reconsider the opinion evidence and Plaintiff’s symptom claims, obtain a  
13 consultative examination, and take medical expert testimony, the ALJ is instructed  
14 to perform the five-step sequential analysis anew, including reconsidering whether  
15 Plaintiff’s anxiety disorder is a severe impairment at step two.

---

16  
17  
18  
19 <sup>3</sup> The Supreme Court upheld the validity of the Commissioner’s severity  
20 regulation, as clarified in SSR 85-28, in *Bowen v. Yuckert*, 482 U.S. 137, 153-54  
(1987).

1 Plaintiff has not argued for an award of immediate benefits, and the Court  
2 finds further proceedings are necessary to address conflicting evidence and take  
3 medical expert testimony. As such, the case is remanded for proceedings  
4 consistent with this Order.

5 **CONCLUSION**

6 Having reviewed the record and the ALJ's findings, the Court concludes the  
7 ALJ's decision is not supported by substantial evidence and is not free of harmful  
8 legal error. Accordingly, **IT IS HEREBY ORDERED:**

9 1. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is **GRANTED**.

10 2. Defendant's Motion for Summary Judgment, **ECF No. 17**, is **DENIED**.

11 3. The Clerk's Office shall enter **JUDGMENT** in favor of Plaintiff  
12 **REVERSING** and **REMANDING** the matter to the Commissioner of Social  
13 Security for further proceedings consistent with this recommendation pursuant to  
14 sentence four of 42 U.S.C. § 405(g).

15 The District Court Executive is directed to file this Order, provide copies to  
16 counsel, and **CLOSE THE FILE**.

17 DATED June 24, 2020.

18 s/Mary K. Dimke  
19 MARY K. DIMKE  
20 UNITED STATES MAGISTRATE JUDGE